



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

FEB 08 2011

201118026

Uniform Issue List: 408.03-00

SE: T: EP: RA: T/

Legend:

Taxpayer A	=
Financial Institution B	=
Financial Institution C	=
Financial Institution D	=
IRA X	=
Amount 1	=

Dear :

This letter is in response to a request for a letter ruling dated July 11, 2010, as supplemented by correspondence dated September 14, October 25, and November 20, 2010, in which you have asked for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to the failure of Financial Institution C to timely deposit Amount 1 into a qualified individual retirement arrangement ("IRA") within the 60-day period as instructed by Taxpayer A. Taxpayer A further asserts that Amount 1 has not been used for any other purpose.

Taxpayer A represents that he was the owner of IRA X, a qualified IRA established and maintained at Financial Institution B under the rules of section 408 of the Code. Taxpayer A represents that he discussed various IRA investment options with representatives at Financial Institution C during the fall of 2009. The representatives recommended that Taxpayer A roll the funds from IRA X into an IRA at Financial Institution C which would be used to purchase contracts at Financial Institution C. Based on the recommendation of the representatives at Financial Institution C, Taxpayer A withdrew Amount 1 of IRA X on November 19, 2009, and deposited it into

his checking account at Financial Institution D with the intention of transferring Amount 1 to an IRA at Financial Institution C. On November 19, 2009, Taxpayer A met with representatives of Financial Institution C and wrote two checks dated November 23, 2009, from his checking account at Financial Institution D totaling Amount 1 and submitted them to these representatives. Pursuant to his instructions, the checks were to be deposited in an IRA at Financial Institution C.

Taxpayer A did not become aware that the funds had not been deposited into an IRA at Financial Institution C until he received notice from Financial Institution D on January 22, 2010. This occurred after the expiration of the 60-day rollover period following Taxpayer A's withdrawal of Amount 1 from IRA X. Financial Institution C failed to deposit Taxpayer A's funds from IRA X until after the 60-day rollover period had expired. Taxpayer A represents that he had no control over the funds during this period of time and relied on Financial Institution C to deposit Amount 1 into an IRA within the 60-day rollover period. Taxpayer A further represents that Amount 1 remains in an account at Financial Institution D and has not been used for any purpose.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at

any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount 1 was due the failure of Financial Institution C to timely deposit Amount 1 into an IRA within the 60-day period as instructed by Taxpayer A.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount 1 to an IRA (or IRAs) described in section 408(a) of the Code. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

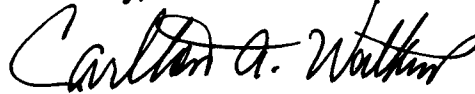
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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If you wish to inquire about this ruling, please contact xxxxxxxxxxxxxxxxxxxx
(Government Identification Number xx-xxxxx) by phone at (xxx) xxx-xxxx or by fax at
(xxx) xxx-xxxx. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted copy of ruling letter
- ▶ Notice of Intention to Disclose